



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2016–N151; FF06E11000–167–FXES11120600000]

Endangered and Threatened Wildlife and Plants; Permits; Draft Supplement to Environmental Impact Statement and Amendment to Habitat Conservation Plan for Forest Management in Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the U.S. Fish and Wildlife Service, intend to prepare a draft Supplemental Environmental Impact Statement (DSEIS) under the National Environmental Policy Act to consider potential impacts on the human environment from proposed amendments to an incidental take permit and associated habitat conservation plan. Under the Endangered Species Act, we issued the original permit to the Montana Department of Natural Resources and Conservation (DNRC) in December 2011, authorizing take of the grizzly bear, Canada lynx, bull trout, and two other fish species incidental to the DNRC's forest management activities. The

purpose of this notice is to describe the proposed action and advise other Federal and State agencies, potentially affected tribes, and the public of our intent to prepare a DSEIS. The DNRC intends to jointly prepare the DSEIS to comply with its responsibilities under the Montana Environmental Policy Act. We are not soliciting comments at this time. The public will have opportunity to comment on the published DSEIS when we announce its availability in the **Federal Register** and local and regional news sources.

FOR FURTHER INFORMATION CONTACT: Ben Conard, Assistant Field Supervisor, at (406) 758-6882 or Ben_Conard@fws.gov; or Gary Frank, Deputy Chief, Forest Management Bureau, Montana DNRC, at (406) 542-4328 or gfrank@mt.gov.

Individuals who are hearing or speech impaired may call the Federal Relay Service at (800) 877-8337 for TTY assistance. Information on this proposed action is also available at the DNRC's Web site, at <http://dnrc.mt.gov/divisions/trust/forest-management/hcp>.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act of 1973, as amended (ESA, 16 U.S.C. 1531 et seq.), we, the U.S. Fish and Wildlife Service (Service) issued an original permit to the Montana Department of Natural Resources and Conservation (DNRC) in December 2011, authorizing take of the grizzly bear, Canada lynx, bull trout, and two other fish species incidental to their forest management activities. The DNRC now is proposing to amend the HCP to incorporate terms of a settlement agreement and is requesting that we amend the permit to cover additional lands.

We intend to prepare a DSEIS under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) to consider potential impacts on the human environment from the proposed amendment to a habitat conservation plan (HCP) and associated incidental take permit issued under section 10(A)(1)(B) of the ESA. The DNRC intends to jointly prepare the DSEIS to comply with the Montana Environmental Policy Act, Mont. Code Ann. 75-1-101–75-1-324 and the DNRC implementing regulations, Administrative Rules of Montana 36.2.501–36.2.611. The DNRC is requesting that the permit be amended to authorize potential take from forest management activities on an additional 81,416 acres. The DNRC is also proposing to amend the HCP to incorporate the terms of a settlement agreement to add conservation measures and remove others that are no longer relevant.

The DNRC is preparing an amendment to the HCP detailing how the proposed action would be adopted to comply with the HCP's required measures to avoid, minimize, and mitigate the effects of incidental take of the covered species to the maximum extent practicable. We provide this notice to (1) describe the proposed action and (2) advise other Federal and State agencies, potentially affected tribes, and the public of our intent to prepare a DSEIS. In the DSEIS, we will analyze potential effects to the covered species and other factors of the human environment from the proposed action and alternatives to the action.

Background

In April 2009, the DNRC applied for a permit for take incidental to forest management activities for the grizzly bear (*Ursus arctos horribilis*), Canada lynx (*Lynx canadensis*), bull trout (*Salvelinus confluentus*), westslope cutthroat trout (*Oncorhynchus clarkii lewisi*), and interior redband trout (*Oncorhynchus mykiss gairdneri*). The grizzly bear, lynx, and bull trout are

federally listed, while the westslope and redband trout species are not. Before deciding whether to issue the permit, we analyzed the potential effects of implementation of the HCP and alternatives in a draft EIS (DEIS). In an announcement in the **Federal Register** on June 26, 2009 (74 FR 30617), we provided the DEIS and DNRC's permit application package, which included the draft HCP, for public review for a total of 105 days. After considering the public comments, the Service finalized the EIS and issued the permit to DNRC on December 14, 2011.

The permit area covers approximately 548,500 acres of forested State trust lands in western Montana. However, because DNRC expected to transfer, exchange, or add lands for their forest management activities in the future, the HCP addressed the process and contingencies for doing so. Thus, the Service considered in the EIS the potential effects of amending the HCP and incidental take permit to cover such actions.

In April 2013, two environmental organizations challenged the issuance of the permit in a Federal District Court in Montana. The Court ruled in the Service's favor on all but one count. DNRC and the plaintiffs subsequently entered a settlement agreement for that count in September 2015. The future addition of lands to the HCP and permit were not part of the complaint or the settlement agreement.

Proposed Action

The Service plans to prepare a supplement to the EIS to assess the effects of the proposed amendment to the HCP and permit and incorporation of the terms of the settlement agreement.

The terms of the settlement agreement focus primarily on adjusting management of DNRC's Class A lands under the Stillwater Block Transportation Plan in the HCP, which entailed a strategy of a cycle of 4 years of active forest management followed by 8 years of rest.

The settlement agreement identifies seven distinct grizzly bear security zones totaling 22,007 acres. These security zones include the entirety of the original 19,400 acres of Class A lands in the Stillwater Block in the HCP, but also add 2,300 acres in a new area in Coal Creek State Forest. The amended HCP would replace the 4-year active/8-year rest management cycle on Stillwater Block Lands with specific measures for restricting forest management activities to the denning season in these grizzly bear security zones. All motorized activities below 6,300 feet in elevation within the grizzly security zones would be allowed during the grizzly denning season and prohibited all year round above that elevation. The same seasonal and elevation restrictions would apply to commercial forest management activities within the grizzly security zones. The current HCP prohibits new permanent road construction on the original 19,400 acres of Class A lands. This measure would remain essentially the same under an amendment, but would be specifically applied to the seven grizzly security zones, including the additional 2,300 acres in the Coal Creek State Forest. Several other measures in the HCP for Class A lands would remain the same but be extended to the grizzly security zones with amendments. Other amendments would specifically spell out measures that DNRC had committed to implement in the original HCP but were previously incorporated by reference from DNRC's Forest Management Administrative Rules of Montana.

Since we issued the permit, DNRC has acquired an appreciable amount of forested lands within the original HCP area, and they are now requesting to amend the HCP and permit to cover an additional 81,416 acres. DNRC proposes to implement the HCP's existing conservation commitments on the additional lands. The six acquisition areas and their acreages are the Swan, which contains 16,446 acres; Chamberlain, which contains 14,537 acres; Potomac, which contains 32,266 acres; Lolo Land Exchange, which contains 11,066 acres; Upper Blackfoot,

which contains 5,458 acres; and Southern Bitterroot, which contains 1,643 acres. The HCP would be amended to reflect inclusion of (1) the Swan acquisition lands in the Swan Transportation Plan, (2) the Swan acquisition area in the Swan Lynx Management Area (LMA), (3) a portion of the Chamberlain acquisition area in the Garnet LMA, and (4) increasing the acres of lynx critical habitat addressed in the HCP.

The original HCP requires the DNRC to complete corrective actions at sites identified with high risk of sediment delivery in bull trout watersheds in the HCP area by 2027. As directed by the settlement agreement, the HCP would be amended to prioritize and complete such corrective actions in federally designated bull trout critical habitat by 2024.

Lastly, over the past 5 years of HCP implementation, the Service and DNRC identified some commitment and procedural clarifications that would be incorporated into the HCP. These amendments would serve to help DNRC understand how to implement certain measures and would not entail any changes to the nature of the measures or how they affect the covered species.

Statutory Requirements

Section 9 of the ESA (16 U.S.C. 1538) and implementing regulations in title 50 of the Code of Federal Regulations (CFR) prohibit the taking of animal species listed as endangered or threatened. The term “take” is defined under the ESA (16 U.S.C. 1532(19)) to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” “Harm” is defined by the Service to include significant habitat modification or degradation where it actually kills or injures listed species by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). “Harass” is

defined by the Service as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Section 10 of the ESA and implementing regulations specify requirements for the issuance of incidental take permits to non-Federal landowners for the incidental take of endangered and threatened species. Such take must be incidental to otherwise lawful activities and not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and the impacts of the take on the listed species must be minimized and mitigated by the permittee to the maximum extent practicable. An applicant for an incidental take permit must prepare an HCP describing the impacts that will likely result from such taking, the conservation program for minimizing and mitigating those take impacts, the funding available to implement the conservation program, the alternatives considered by the applicant to avoid such taking, and the reason(s) such alternatives are not being implemented.

NEPA requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. The Service determined that the final DNRC HCP EIS (September 17, 2010) requires a supplement since the changes in the proposed action may materially or substantially affect the analysis of impacts (40 CFR 1502.9 and 516 DM 4.5).

Public Comments

The DSEIS will be developed using the same process as the original DNRC HCP EIS. We are not soliciting comments at this time. The public will have opportunity to comment on the published DSEIS, which will be announced in the **Federal Register** and local and regional

news sources. For general inquiries or questions about the DSEIS process, see **FOR FURTHER INFORMATION CONTACT.**

Authority

The environmental review of this proposed action will be conducted in accordance with the requirements of NEPA, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Interior NEPA regulations (43 CFR part 46), other applicable Federal laws and regulations, and policies and procedures of the Service. This notice is being furnished in accordance with 40 CFR 1501.7 to notify the public of the Service’s intent to prepare a DSEIS.

Michael Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2016-28736 Filed: 11/28/2016 8:45 am; Publication Date: 11/29/2016]